

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Rick Gorley,

Plaintiff,

vs.

Metroplains,

Defendant.

)
)
)
)
)
)
)
)
)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Case No. 1:08-cv-085

On October 1, 2008, the plaintiff, Rick Gorley, filed a motion for leave to proceed in forma pauperis. See Docket No. 1. On October 3, 2008, Magistrate Judge Charles S. Miller, Jr. granted Gorley's motion. See Docket No. 3. Gorley subsequently filed a complaint against the Defendant. See Docket No. 4. Pursuant to 28 U.S.C. § 1915, Judge Miller conducted a review of the record and relevant case law and submitted a Report and Recommendation on October 3, 2008. See Docket No. 5. Judge Miller recommended that Gorley's complaint be dismissed without prejudice to the filing of either a paid complaint or a complaint that cures the following deficiencies in the original complaint: Gorley's complaint does not set forth a claim of constitutional dimension or allege a violation of federal law; it does not establish an apparent basis for federal court jurisdiction; and it is questionable whether the Court has the authority to intervene in what appears to be a matter that is the subject of a state court proceeding.

Gorley was given ten (10) days to file an objection to the Report and Recommendation. On October 20, 2008, Gorley filed a motion for an extension of time to file an objection. See Docket No. 6. The Court granted the motion and gave Gorley until December 15, 2008, to file an objection. See Docket No. 7. To date, Gorley has not filed an objection.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 5) in its entirety and **DISMISSES WITHOUT PREJUDICE** Gorley's complaint (Docket No. 4) to the filing of either a paid complaint or a complaint that cures the original complaint's deficiencies. Gorley's motion for a hearing (Docket No. 2) is **DENIED AS MOOT**.

IT IS SO ORDERED.

Dated this 18th day of December, 2008.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court